Appellate Leave

Capt David Cox
NAMALA
3 Feb 04

NAVY AND MARINE CORPS
APPELLATE LEAVE ACTIVITY
PALLAQUA A IRITICO SEPARATUR

NAMALA MISSION

Administer centralized appellate leave/tracking for all Navy & Marine Corps members on appellate leave and those members assigned to the Federal Bureau of Prisons who are awaiting results of appellate review, and to perform such other functions and tasks as directed.

NAMALA FUNCTIONS

- Provide on-site training
- Monitor case status of Appellants on
  Leave or guests of FBOP
- Monitor case status of Parollees &
  Supervised Releasees
- Validate requests for renewal of
  military identification cards

NAMALA FUNCTIONS CONT'D

- Maintain Service, Medical, and Dental

  Records
- Effect decisions of NMCCA, CAAF,

  USSC as directed by JAG
- Effect clemency action as decided by

  NC&PB
- Provide info as requested by Congress, DFAS, NCIS, etc.

STAFFING

NAVY

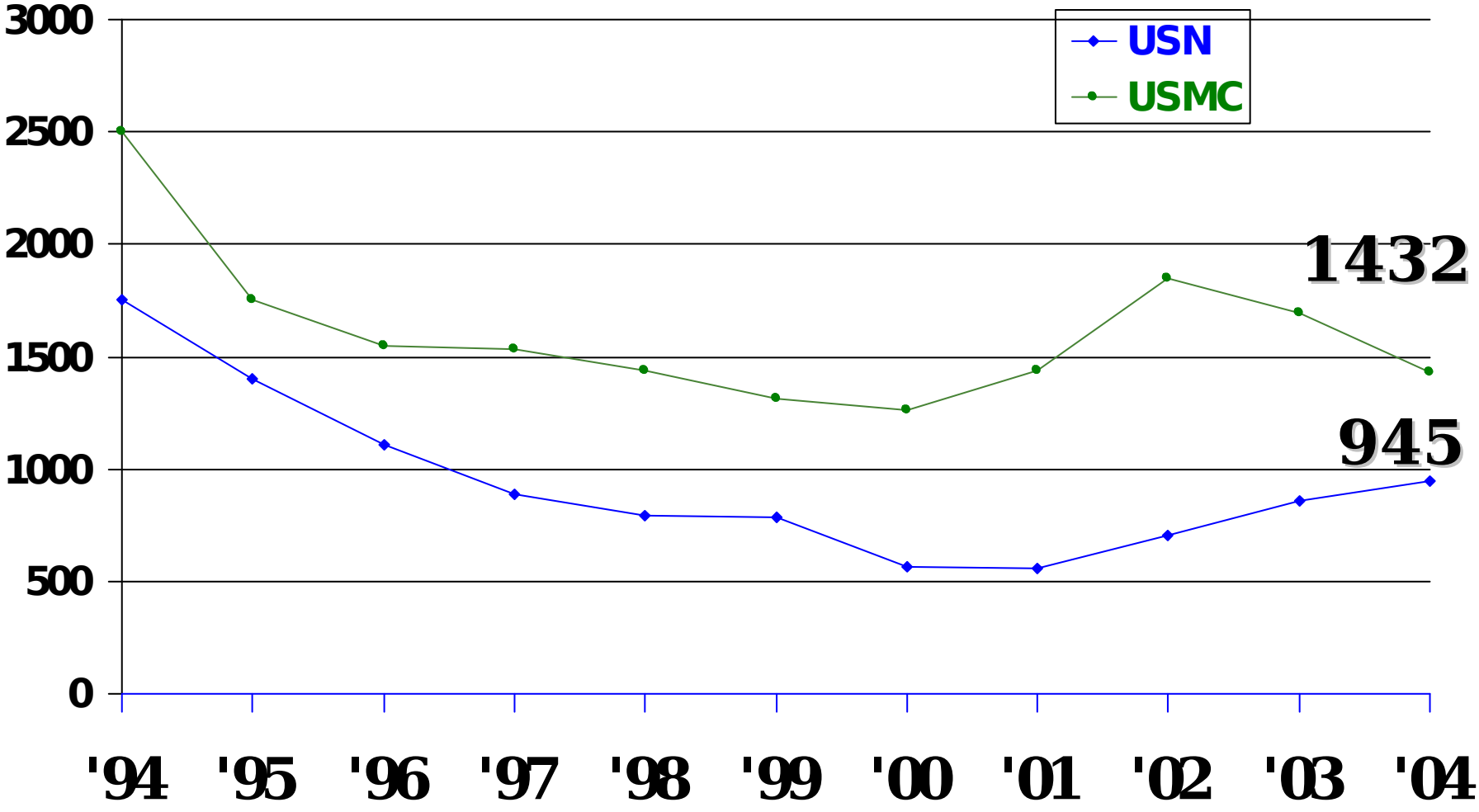
LCDR
PN2
PNSN
GS-6
GS-5
GS-5

MARINES

Capt
Gunny
SSgt
2 Sgts
LCpl

Appellant Population

2377 as of 23 Jan 04



APPELLATE LEAVE?

(SECNAVINST 1050.1A)

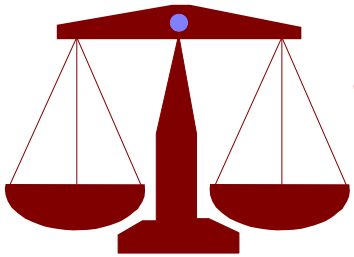
- Defined: Required or permitted leave for members awaiting review of a punitive discharge or dismissal.
- Policy: Use required or voluntary (permitted) leave to aid in removing from the presence of the active force, expeditously, those members being punitively discharged or dismissed

Appellate Leave

Voluntary/Request vs Involuntary/Mandatory

- CA has not acted
- Punitive Discharge is adjudged
- Confinement is completed
- Requested by member

- CA has acted
- Punitive Discharge is adjudged
- Confinement, parole, & supv. released completed
- CA has directed



APPELLATE REVIEW OVERVIEW

- **SPCM (Non-BCD or Waiver)**
  - → **GCM Staff Judge Advocate Review**

- **SPCM (BCD or 1 Year Confinement)**
  - **Court of Criminal Appeals**
    - **Court of Appeals for Armed Forces**
      - **Supreme Court**

APPELLATE REVIEW OVERVIEW Cont'd

GCM (BCD, DD, Dismissal or 1 Year or more Confinement)

- **Court of Criminal Appeals**
  - **Court of Appeals for Armed Forces**
    - **Supreme Court**

GCM (Non- punitive discharges & less than 1 year Confinement)

- **Office of the Judge Advocate General Review**

Appellant “Entitlements”

- MOST active duty benefits and privileges

- Exceptions to entitlements:

  - No Space-A Travel

  - Appellants W/O dependents (INCONUS) do not rate final shipment of HHGs

  - **Restricted to CONUS while on Appellate Leave**

Post Courts Martial Goals

OPNAVINST 5810.4/JAGINST 5810.1

- Record of Trial to SJA: 25-30 days
- CA's Action Complete: 41-50 days
- Tracer Letter/Message to CA : 60 days
  - Follow-up to ISIC & OJAG at 90 days
  - Not required for USMC - HOWEVER
  - Recommend letter at 2 months, message at 3 months

TIMELINE OF DELAYS

- **Sentence Adjudged Date to CA's Action 6**
  - **Appellant remains attached to Unit**

- **CA's Action to Completed Review (NOCAR) 14**
  - **Appellant should belong to NAMALA at this point and off the Unit's Rolls**
  - **Continues to be entitled to Medical Benefits**
  - **Continues to be subject to the UCMJ**

- **NOCAR to SCMO to DISCHARGE 1**

- **Average total delay to discharge: 21**

***Measured in months**

***Based on OCT/NOV/DEC '03 Data**

IMPACT OF DELAYS

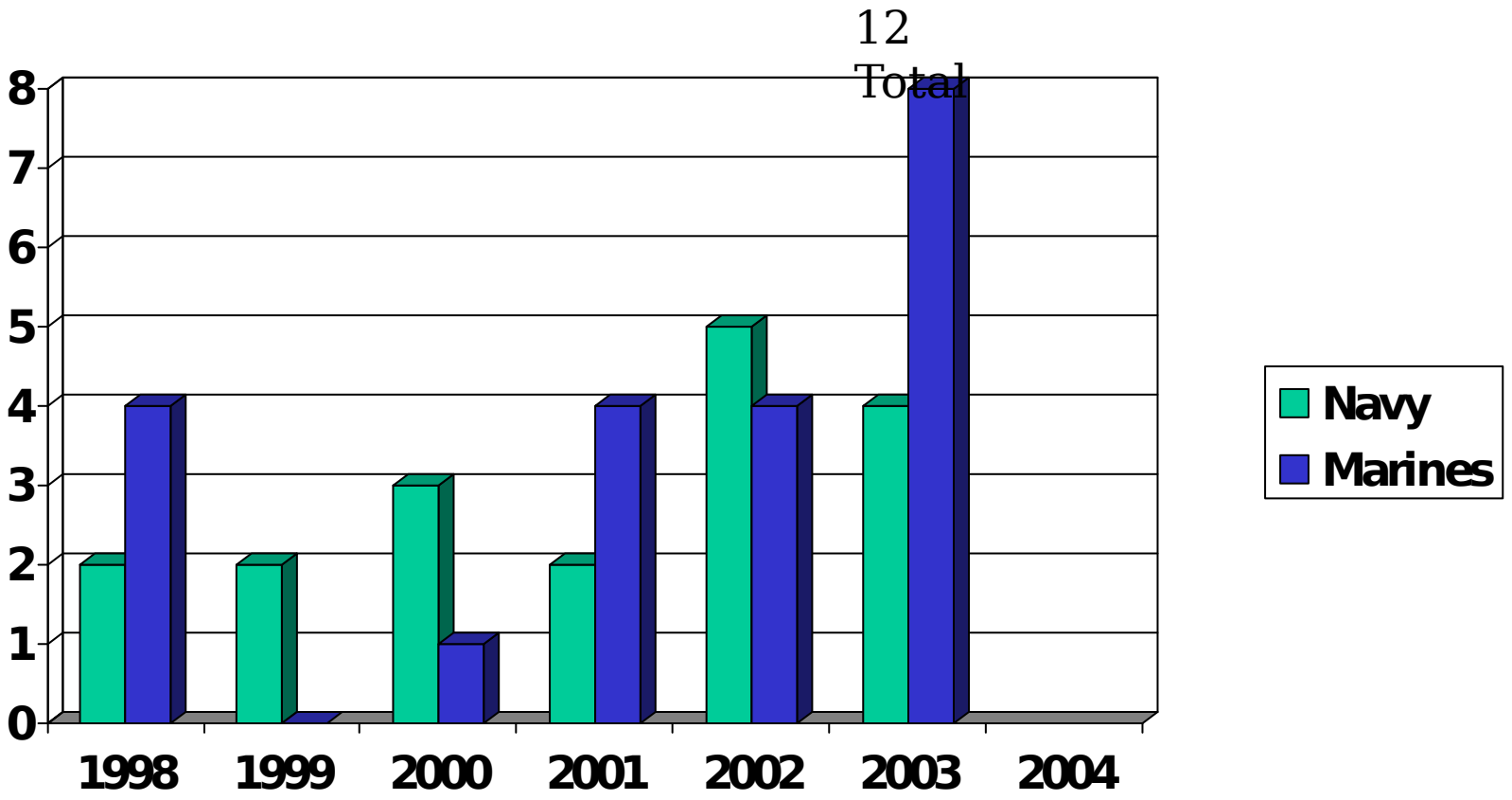
- Medical Benefits used
  - $1,091.17/ month / appellant *
  - Combined Medical & Emergency Dental
- Costs if death occurs while on Appellate Leave
  - SGLI @ $250,000.00
  - Death = Abatement resulting in restoration of Rights, Privileges & Property (Honorable Discharge + back pay and allowances) Death Gratuity, Burial, & possibly Survivors Benefit Plan

* Based on data from MMSO, Great Lakes, IL

IMPACT OF DELAYS

- Lost Record of Trial = Could result in **CM being set aside or reduced sentence**
- **CM set aside** = Pay and allowances restored, Pay grade restored, all fines and forfeitures restored, potential return to active duty, potential retirement (all Appellate Leave counts towards retirement)
- Over the past 8 years 150 ROTs were identified as being lost
  - Cost to government: Over $19 MILLION
  - **Those 150 or so were either retired or returned to active duty**

Death cases since 1998



REDUCING DELAYS

- **TRACK POST TRIAL PROCESS**
  - **Completion of CA's Action**
- **SEPARATIONS PHYSICALS**
  - **Try and obtain while mbr's confined!**
  - **Missing records, HIV Test, Level III, DNA**

REDUCING DELAYS

- **AUDIT OF RECORDS**
  - **Service Record closed out properly**
  - **Microfiche ordered and new record created if lost**
  - **Follow Appellate Leave Checklists before mailing**
  - **DNA Sample taken & annotated in Service Record!**
  - **Sex Offender Registration Form in Service Record!**

ALTERNATIVES

- NJP/SCM & ADSEP in lieu of CM
  - CO has absolute discretion
  - Expedited separation vs deterrence and impact on member as well as other Sailors & Marines
- Appellant may waive Automatic Appeal/Review (RCM Art. 1110) / (Article 61, UCMJ)

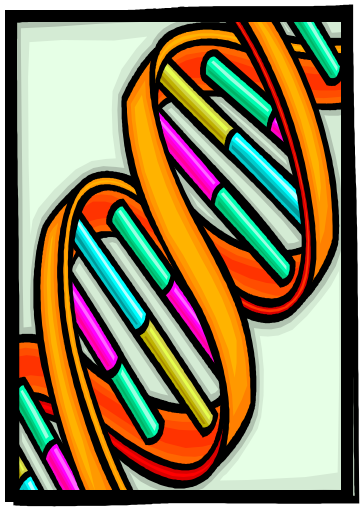
OTH VS. BCD

(Benefit Eligibility based on the Characterization of Service)

	OTH	BCD
• Payment of Accrued Leave	NE	NE
• Death Gratuity	E	E
• Burial in Army / National Cemeteries	NE	NE
• Board for Correction of Naval Records	E	E
• Transportation to Home	E	E
• Pre-Separation Counseling	E	E
• Employment Assistance	E	E
• Health, Comm, Exchange, G.I. Bill	NE	NE
• Navy Discharge Review Board	E	NE

FACTS ABOUT WAIVING APPELLATE REVIEW

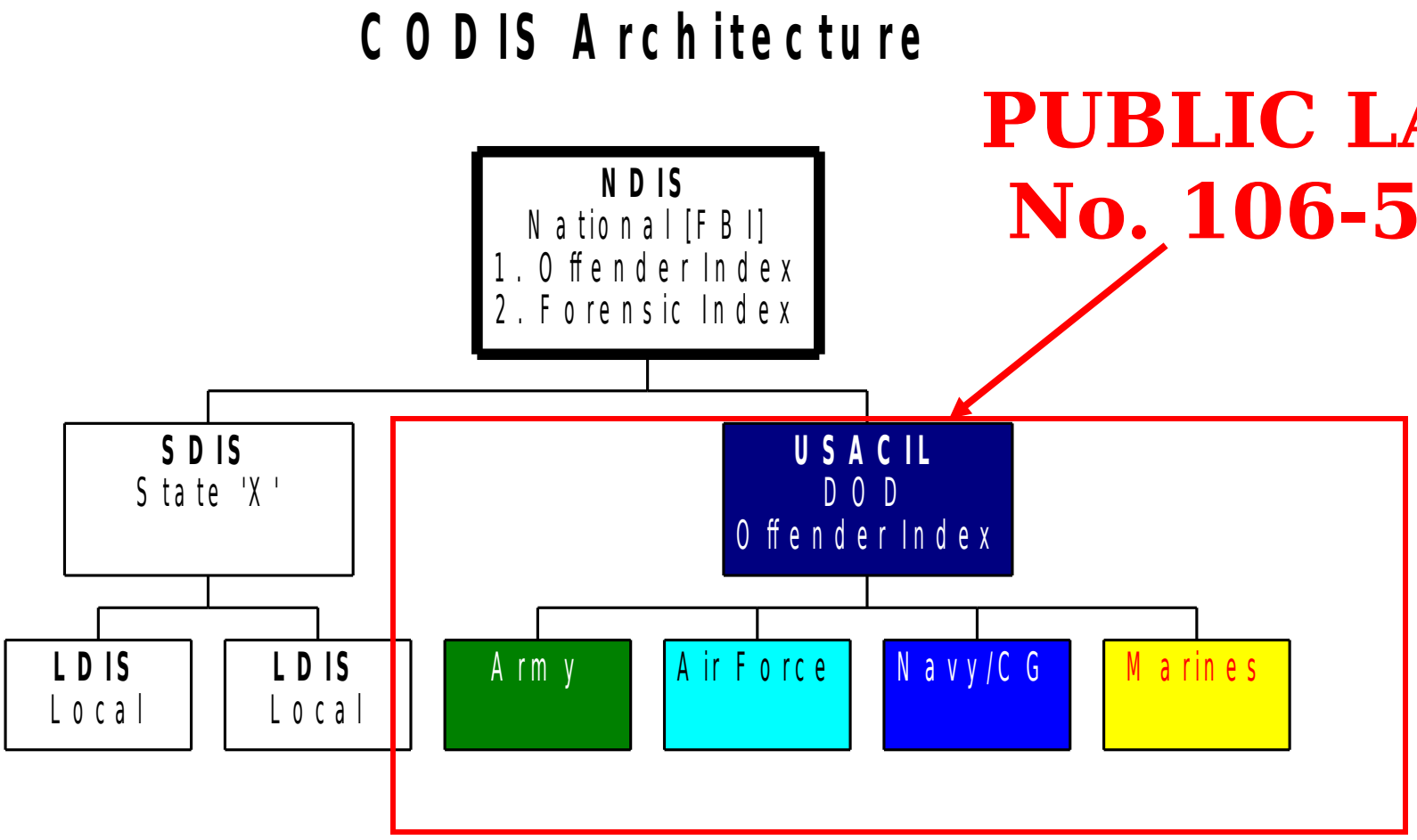
- <1% of cases are set aside by CCA
- Discharge Certificate (DD214) issued immediately
- May be easier to obtain employment
- No longer subject to UCMJ
- No longer required to inform command of address changes
- May travel abroad
- Pay account reconciled for final pay settlement **(SGLI)!**
- **Downside….. No chance of conviction being overturned if appeal is waived.**



DNA
DEOXYRIBONUCLEIC ACID
FINGERPRINTING

- What is CODIS?
- When is DNA analysis mandated?
- What are the SJA's responsibilities?
  - DoDI 1325.7
  - SECNAV NOTE 5800 Pers 84 of 6 Jun 2002

CODIS
COmbined DNA Index System



DNA ANALYSIS Req'd?

Conviction of a Qualifying Military Offenses?

- Definition of a **Court-Martial Conviction** is a finding of guilty at a general or special court-martial that is approved by the convening authority.

SECNAVNOTE 5800/DoDI 1325.7

- "For QMO convictions resulting from convening authority action on or after June 19, 2001, the Staff Judge Advocate **shall** ensure that the top of the first page of the initial promulgating order is annotated in bold with '**DNA processing required. 10 U.S.C. § 1565**.'"
- SJA/LO brief CO's on responsibility.

SECNAVNOTE 5800/DoDI 1325.7 CONT'D

- "Staff Judge Advocates **shall** ensure that a copy of each annotated promulgating order is provided to the USACIL, NPC (Pers 84) and the correctional facility or unit to which the convicted member is assigned as applicable."
- Service Records shall contain the following entry: "DNA blood sample drawn this date per Section 5, DNA Analysis Backlog Elimination Act of 2000 (10 U.S.C. 1565) and forwarded to U.S. Army Criminal Investigation Laboratory on –date-"

NAMALA DNA BACKLOG

- Nearly 500 Marines and Sailors identified by NAMALA as needing DNA samples taken
- Letters to the above members sent via certified/return receipt mail
- To date:
  - Only 28% have had samples taken
- Must have Pg 11 entry noting sample was taken
- If a Sex Offender, Appellant must be notified of his obligation to register as a Sex Offender

GENERAL REFERENCES

- **SECNAVINST 1050.1A** (Leave for Members Awaiting Review of Punitive Separation)
- **MILPERSMAN 1050-310 through 1050-380**
- **MCO 1050.16A** (Appellate Leave Awaiting Punitive Separation
- **JAG Manual w Ch 3**
- **Manual for Courts-Martial, 2002 ed**
- **SECNAVINST 5815.3J** (Clemency & Parole Board)
- **OPNAVINST 5810.4/JAGINST 5810.1** (Management Goals for Processing Navy Courts-Martial)
- **DoD PayMan** (10307/10317/70501-511)
- **Joint Federal Travel Regs** (U5240/U5317/U5370)
- **SECNAV Note 5800**, DNA Backlog Elimination Act of 2000

QUESTIONS??